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TRANSMITTAL FORM (to be used for all correspondence after initial filing)	Application Number	10/613,946	
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	First Named Inventor	Keving T. Connelly	
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**BEFORE THE BOARD OF APPEALS
AND INTERFERENCES**

REPLY BRIEF

This is a Reply Brief to the Examiner's Answer having a mailing date of June 28 2007. According to the M.P.E.P. 1208.03 AND 37 CFR 1,193 (b)(1), the Appellant may file reply brief to an Examiner's Answer within two months of such examiner's answer. Therefore, the reply brief is due by August 28, 2007.

In response to the examiner's answer, the appellant is offering the following rebuttal:

The examiner's grounds of rejection are substantially verbatim of the grounds of rejection that were made in the final rejection.

Claims 1 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson et al (US Patent No. 5,487,401) in view of Kupferman (US Patent No. 5,890,506) and in view of Bilotti (US Patent No. 5,678,587). It takes three references to reject claims 1 and 4. The examiner is using a secondary reference to modify the base reference and then uses a third references to modify the modify the modification.

The examiner misinterprets the Johnson reference by stating that "Johnson teaches a shade and rain umbrella combination. This is not what Johnson teaches. In fact The Johnson umbrella is only a rain umbrella that has a base rain cover 20 with large vent holes 34 therein. The base cover 20 is explained in column 6, lines 2 and 3 as being made of a water resistant material (such a nylon cloth). This is totally contrary to what appellant is

claiming and that is that a shade cover is placed over the ribs of the umbrella and the shade cover consists of a woven mesh fabric for protection against ultraviolet rays of the sun. the nylon cloth of Johnson certainly cannot be termed a mesh fabric because it would not be rain resistant. This is so because the appellant claims that the mesh fabric is a protection against the ultraviolet rays of the sun while at the same the mesh of the fabric allows ventilation air to pass through the mesh.

The examiner continues that “the water resistant material would inherently provide protection against a certain amount of ultraviolet rays of the sun” This is a pure speculation by the examiner because the Johnson references does not teach this fact anywhere.

The base reference certainly allows ventilation to pass there through but this ventilation is immediately covered by a separate water proof rain cover. The purpose of the secondary rain cover is explained in detail by Johnson in that the secondary rain cover is designed to cover the large vent openings in the base canopy to prevent rain to enter any of those openings 34. The reason for this is explained by Johnson in column 7, lines 1 - 10 wherein it is explicitly stated that during rainy, windy weather, wind 54 that is caught beneath the canopy 20 exits through the vent holes 34 and applies pressure to the underside of the upper canopy 26. This forces the canopy 36 to lift away from the lower canopy 20 by means of the elastic straps 48 which are slightly stretched to provide a relative large escape path 56 for wind 54, Wind 54 can then pass through passes 44 to escape umbrella 10. *Thus, any excessive wind 54 will not invert umbrella 10.*

This then is the invention of Johnson, while appellants invention is directed to a totally different concept. Appellant has directed his invention to the use

of a two mode umbrella. In the first mode the umbrella is a shade cover. A mesh woven fabric is the only canopy on the umbrella ribs to be used as a shade cover. The mesh in the fabric allows ventilation air to pass through the fabric. This not true in Johnson where big holes 34 pass air there through for an entirely different reason.. In case of rain, the second mode of use, appellant applies a separate rain-proof cover over the entire shade canopy to prevent rain water from entering the mesh woven fabric. When the rain ends the rain-proof cover is removed and only the shade cover remains for use in the first mode.

The examiner now applies the reference to Kupferman to modify the Johnson reference. An object of the Kupferman reference is to present an umbrella which vents air from its lower concave surface to the upper convex surface. This design helps to minimize or prevent damage to the umbrella due to air blasts and particularly, prevents or minimizes annoying umbrella inversion which may occur when the concave side of the umbrella is subjected to a blast of air. See Kupferman, column 1, lines 1 - 10.

The examiner now modifies the Johnson reference by stating that "although Johnson et al does not define the shade cover being made of a fabric mesh material for protection against ultraviolet rays of the sun as claimed." The examiner further states that "it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the umbrella of Johnson having a shade cover having at least a portion such as the openings being covered by a woven mesh fabric as taught by Kupferman. By modifying the Johnson reference as suggested by the examiner, the alleged person having ordinary skill in this art would readily recognize that this modification would destroy the intended use of the Johnson reference. To

further modify this Kupferman mesh material by applying a coat of ultraviolet blocking material as taught by Bilotti is totally useless because the lower canopy of Johnson is never exposed to the sunlight. It is also pointed out that the appellant does not claim a coating of ultraviolet blocking material. Therefore, the examiner's statement "that Bilotti's teaching to provide an umbrella having a shade cover being specifically made of fabric mesh material with a layer of ultraviolet rays protecting coat for (sic) against ultraviolet rays of the sun as claimed to (sic) against UV rays of the sun and allowing ventilation air passed there through at the same time when the umbrella being used in sunshine and can be covered by the removable rain cover thereon". The above statement is pure speculation and is not supported by the combination of the three references applied to claims 1 - 4 but is taken from appellant's specification. All three references individually or combined do not teach the structure or use of a dual mode umbrella that when one canopy thereon is a shade cover while at the same time allowing ventilating air to pass through the mesh fabric and a second mode when a separate rain proof cover is fully applied on the shade cover in case of rain.

Claims 9 - 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson et al '401 in view of Kupferman '506 and Bilotti '587, and further in view of Allee (US Patent No 6,378,539).

The examiner states that "The claims are considered to meet (sic) by Johnson et al modified by Kupferman and Bilotti as explained and applied set forth above rejections except neither Johnson et al, nor Kupferman nor Bilotti define the umbrella combination including means for clamping the shaft in an upright position on a support. The appellant agrees with the

examiner that neither Johnson, Kupferman or Bilotti define the umbrella combination. This is clearly brought out by the Appellant's arguments and reasons set forth above. The appellant will not further delve into the rejection in par. 2 where the fourth reference to Allee has been applied because it is believed that the rejection of claims 1 - 4 as being unpatentable over Johnson, Kupferman and Bilotti clearly has been refuted and the application of the fourth reference to Allee does add any weight to the rejection of claims 9 - 11.

In view of all of the above and the Brief filed on February 21, 2007 the Board is respectfully requested to consider the rejections made by the examiner in appellant's favor and allow claims 1 - 4 and 9 - 11 to go forward into the issuance of a patent.


Werner H. Schroeder

Reg. No. 36,387

Date: 08/07/07